

FILED: SUFFOLK COUNTY CLERK 03/21/2022 02:44 PM
NYSCEF DOC. NO. 1

INDEX NO. 605121/2022

RECEIVED NYSCEF: 03/21/2022

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK**

JOHN SIMPSON,

*Index No.
Date Filed:*

Plaintiff,

*Plaintiff designates SUFFOLK
County as the place of trial*

-against-

**CVS ALBANY, L.L.C. and
LIBERTY COCA-COLA BEVERAGES LLC,**

*The basis of venue is
plaintiff's residence*

Defendants.

SUMMONS

*Plaintiff resides at
45 Jamaica Ave.
Wyandanch, NY 11798*

To the above named Defendants:

County of SUFFOLK

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Defendant's address:

CVS ALBANY, L.L.C.
*c/o CVS Pharmacy, Inc.
Attn.: Melanie Luker
1 CVS Drive
Woonsocket, RI 02895*

LIBERTY COCA-COLA BEVERAGES LLC
*c/o Corporation Service Company
80 State St.
Albany, NY 12207*

SIBEN & SIBEN, LLP
*Attorneys for Plaintiff
Office and Post Office Address
90 East Main Street
Bay Shore, New York 11706
(631) 665-3400
File No.: 12/27/21 A*

SEND TO YOUR INSURANCE COMPANY PROMPTLY

AGF/tv
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

JOHN SIMPSON,

X

Plaintiff,

COMPLAINT

-against-

Index No.

CVS ALBANY, L.L.C. and
LIBERTY COCA-COLA BEVERAGES LLC,

Defendants.

X

Plaintiff, complaining of the defendants by her attorneys, SIBEN & SIBEN, LLP, respectfully alleges, upon information and belief:

FIRST: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., was a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

SECOND: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., was a foreign corporation authorized to do business in the State of New York.

THIRD: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., was a partnership or other unincorporated entity authorized to do business in the State of New York.

FOURTH: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., was the owner and/or one of the owners of a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

FIFTH: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., its agents, servants and/or employees operated a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

SIXTH: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., its agents, servants and/or employees managed a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

SEVENTH: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., its agents, servants and/or employees controlled a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

EIGHTH: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., its agents, servants and/or employees maintained a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

NINTH: That, at all times hereinafter mentioned, defendant, CVS ALBANY, L.L.C., entered into an agreement regarding the delivery and/or sale of Coca-Cola and/or other beverages to the certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

TENTH: That, at all times hereinafter mentioned, defendants, jointly or severally, invited members of the general public to the aforesaid premises for business purposes.

ELEVENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, was a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

TWELFTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, was a foreign corporation authorized to do business in the State of New York.

THIRTEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, was a partnership or other unincorporated entity authorized to do business in the State of New York.

FOURTEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, was the owner and/or one of the owners of a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

FIFTEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, its agents, servants and/or employees operated a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

SIXTEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, its agents, servants and/or employees managed a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

SEVENTEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, its agents, servants and/or employees controlled a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

EIGHTEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, its agents, servants and/or employees maintained a certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

NINETEENTH: That, at all times hereinafter mentioned, defendant, LIBERTY COCA-COLA BEVERAGES LLC, entered into an agreement regarding the delivery and/or sale of Coca-Cola and/or other beverages to the certain CVS retail pharmacy/store located at 1944 Deer Park Avenue, Deer Park, New York.

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TWENTIETH: That, at all times hereinafter mentioned, defendants, jointly or severally, invited members of the general public to the aforesaid premises for business purposes.

TWENTY-FIRST: That, on the 27th day of December, 2021, while the plaintiff was lawfully at the aforesaid location, he was caused to be precipitated to the floor and become severely injured due to the carelessness, recklessness, and negligence of the defendants, their agents, servants, and/or employees.

TWENTY-SECOND: That the defendants, their agents, servants, and/or employees were careless, reckless, and negligent in the ownership, operation, maintenance, management, supervision and control of the aforesaid retail pharmacy/store; in carelessly, recklessly and negligently causing, allowing and/or permitting the plaintiff to be propelled to the ground and become seriously injured; in failing to provide plaintiff with a safe place to walk; in carelessly, recklessly and negligently causing, allowing and/or permitting narrow aisles to exist at the aforesaid retail pharmacy/store, creating a hazard and a trap; in failing to maintain the aforesaid retail/department store in a safe and proper manner; in failing to expeditiously clear the aisles; in that defendants' agents, servants, and/or employees carelessly, recklessly, and negligently created a tripping hazard while stocking product; in failing to make timely inspections of the aforesaid area which would have disclosed the dangerous and defective condition existing thereat; in failing to foresee this incident; in failing to post signs, notices and/or other warnings of the dangerous and defective condition existing thereat; in failing to erect barricades, fences, ropes, cones or other safety devices for the proper protection of plaintiff and others; that defendants knew, or by reasonable inspection thereof, should have known of the dangerous and defective condition existing thereat and failed to repair and/or remedy the same; in carelessly, recklessly and negligently causing, allowing and/or permitting the aforesaid condition to be and

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remain for a long and unreasonable length of time under the circumstances then and there existing; in failing in their non-delegable duties to the plaintiff herein; and, in other ways, acted in a careless, reckless and negligent manner.

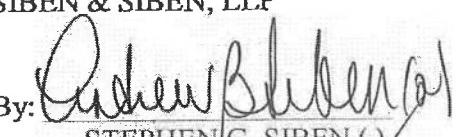
TWENTY-THIRD: That, at all times hereinafter mentioned, defendants had actual, constructive and/or written notice of the aforesaid dangerous and defective condition.

TWENTY-FOURTH: That by reason of the premises, the plaintiff was rendered sick, sore maimed and disabled; and he was injured, bruised and wounded about his head, body and limbs; and upon information and belief, some of his injuries are of a permanent nature and character; and he has suffered and continues to suffer physical pain and mental anguish; and he has been incapacitated, all to his damage in a sum in excess of the monetary limits of any lower courts.

TWENTY-FIFTH: That this action falls within one or more of the exceptions set forth in C.P.L.R. 1602.

WHEREFORE, plaintiff, JOHN SIMPSON, demands judgment against the defendants in a sum in excess of the monetary limits of any lower courts, together with the costs and disbursements of this action.

SIBEN & SIBEN, LLP

By: 

STEPHEN G. SIBEN ()

ANDREW B. SIBEN ()

JACQUELINE SIBEN ()

MARK A. RUDNER ()

Attorneys for Plaintiff
Office & P.O. Address
90 East Main Street
Bay Shore, New York 11706
(631) 665-3400
File No: 12/27/21 A

FILED: SUFFOLK COUNTY CLERK 04/22/2022 11:14 AM

AFFIDAVIT OF SERVICE

RECEIVED NYSCEF: 04/22/2022

NYSCEF DOCKET NO. 605121/2022
STATE OF NEW YORK
COUNTY OF SUFFOLK

SUPREME COURT FILED ON: 03/21/2022

INDEX NO.: 605121/2022

JOHN SIMPSON

Plaintiff(s)-Petitioner(s)

-vs-

CVS ALBANY, L.L.C., ET AL.

Defendant(s)-Respondent(s)

STATE OF NEW YORK}
COUNTY OF SARATOGA ss.)

I, MARK E. MCCLOSKEY being duly sworn, deposes and says that deponent is over the age of eighteen years, is not a party in this proceeding and resides in New York State.

On APRIL 12, 2022 at 2:00 P.M.

Deponent served two true copies of NOTICE OF ELECTRONIC FILING (MANDATORY CASE) (UNIFORM RULE § 202.5-bb), SUMMONS AND COMPLAINT

bearing index number: 605121/2022 and date of filing: 03/21/2022

upon CVS ALBANY, L.L.C.

at address: SECRETARY OF STATE, 99 WASHINGTON AVENUE

city and state: ALBANY, NY 12210

MANNER OF SERVICE}Personal

- By delivering to and leaving with personally} known to the deponent to be the same person mentioned and described in the above proceeding as the person to be served.

Suitable Age Person

- By delivering and leaving with personally} at the premises mentioned above. Such person knowing the person to be served and associated with him/her, and after conversing with him/her, deponent believes him/her to be a suitable age and discretion.

Authorized Agent

- By delivering and leaving 2 copies with} AMY LESCH, BUSINESS DOCUMENT SPECIALIST the agent for service on the person in this proceeding designated under Rule 303 LLC and tendering the required fee. Service having been made to such person at the place, date and time above.

Affixing to Door, Etc.

- By affixing a true copy of each to the door of the actual place of business, dwelling place or usual place of abode stated above. Deponent was unable with due diligence to find the proper or authorized person to be served, or a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode stated above after having called there on the following dates and times:

Mailing

- Deponent completed service by depositing a true copy of each in a postpaid, properly addressed envelope in an official depository under the exclusive care and custody of the United States Postal Service. The package was labeled "Personal & Confidential" and mailed to the person stated above at address on . The envelope did not indicate on the outside that the communication was from an attorney or concerned an action against the recipient. The envelope was mailed by—first class mail—certified mail—registered mail—return receipt requested.

DESCRIPTION} deponent describes the person actually served as:Sex: FEMALE Race/Skin Color: WHITE
Approximate Age: 45 years Approximate Height: 5'8"
Other:

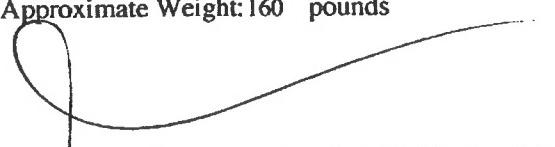
Hair Color: BLONDE

Approximate Weight: 160 pounds

Subscribed and sworn before me on} APRIL 12, 2022

Notary Public, State of New York
Karen E. Rock
Qualified in Schenectady County
Number 01R06065213
Expires: October 9, 2025

Attorney:
Siben & Siben, LLP
90 East Main Street
Bay Shore, Ny 11706
631-665-3400


MARK E. MCCLOSKY
Deponent
affidavit #: 249973
NLS#: 22-2847

FIRM FILE # 2270538

FILED: SUFFOLK COUNTY CLERK 04/22/2022 11:14 AM**AFFIDAVIT OF SERVICE**

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NYSCEF DOCKET NO. 4
**STATE OF NEW YORK
COUNTY OF SUFFOLK**

SUPREME COURT FILED ON: 03/21/2022

INDEX NO.: 605121/2022

JOHN SIMPSON

Plaintiff(s)-Petitioner(s)

-vs-

CVS ALBANY, L.L.C., ET AL.

Defendant(s)-Respondent(s)

**STATE OF NEW YORK
COUNTY OF SARATOGA ss.)**

I, MARK E. MCCLOSKY being duly sworn, deposes and says that deponent is over the age of eighteen years, is not a party in this proceeding and resides in New York State.

On APRIL 12, 2022 at 2:00 P.M.

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SUMMONS AND COMPLAINT**

bearing index number: 605121/2022 and date of filing: 03/21/2022
upon **LIBERTY COCA-COLA BEVERAGES LLC**
at address: **SECRETARY OF STATE, 99 WASHINGTON AVENUE**
city and state: **ALBANY, NY 12210**

MANNER OF SERVICE}Personal

- By delivering to and leaving with personally}
known to the deponent to be the same person mentioned and described in the above proceeding as the person to be served.

Suitable Age Person

- By delivering and leaving with personally}
at the premises mentioned above. Such person knowing the person to be served and associated with him/her, and after conversing with him/her, deponent believes him/her to be a suitable age and discretion.

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Service having been made to such person at the place, date and time above.

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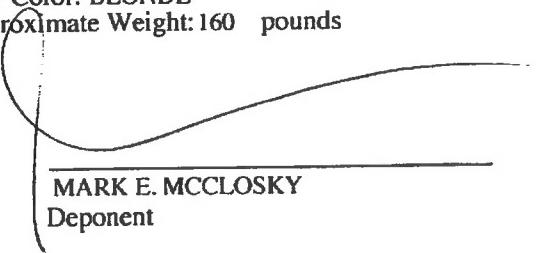
Subscribed and sworn before me on} APRIL 12, 2022

Notary Public, State of New York
Karen E. Rock
Qualified in Schenectady County
Number 01R06065213
Expires: October 9, 2025

affidavit #: 249972
NLS#: 22-2847

Attorney:
Siben & Siben, LLP
90 East Main Street
Bay Shore, Ny 11706
631-665-3400

FIRM FILE # 2270539


MARK E. MCCLOSKY
Deponent